Public Document

BEFORE THE
UNITED STATES TRADE REPRESENTATIVE

IN THE MATTER OF:	)	
	)	Investigation No. TA-201-73
Certain Steel	)	

WRITTEN COMMENTS OF

CONFAB, S.A. ("CONFAB")

REGARDING
WELDED TUBULAR PRODUCTS OTHER THAN OCTG

POTENTIAL ACTION UNDER SECTION 203 OF THE TRADE ACT OF 1974 WITH REGARD TO IMPORTS OF CERTAIN STEEL

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I. INTRODUCTION

These written comments are submitted on behalf of CONFAB. S.A. ("CONFAB"), a Brazilian exporter of welded large diameter line pipe ("welded LDLP"), a product contained within the product category, "welded tubular products other than OCTG," or "welded non-OCTG."[1] As a general matter, CONFAB opposes the imposition of safeguards relief on imports of the broad category of welded non-OCTG. Whatever remedy the President decides to impose on welded non-OCTG, however, CONFAB respectfully requests that certain LDLP, as described below, be excluded from the remedy. Indeed, an exclusion of these products has been requested or endorsed by the U.S. welded LDLP industry, approved by the U.S. Department of Commerce ("Commerce"), supported by major U.S. energy companies, and recommended to the President by the U.S. International Trade Commission ("ITC").

The products that CONFAB wishes the President to exclude from his remedy determination are classified under HTS 7305.11.10.30, and may be described as follows:

> "High-specification large-diameter welded line pipe, API grades X65 and X70, 18" and greater in outside diameter, with wall thickness 0.562" and greater."

The most compelling reason for excluding these products from any remedy the President decides to impose is simply that the U.S. welded LDLP industry supports such an exclusion. As

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1 This product category was designated "Product Category 20" by the International Trade Commission ("ITC") in its recently concluded Section 201 investigation.

CONFAB pointed out in its November 13 exclusion request covering these products, a substantial majority of products falling within this specification (those with wall thickness 0.688" and greater) fall within the range of products that the U.S. welded LDLP industry specifically requested to have excluded from the current Title VII investigations on Certain Welded Large Diameter Line Pipe from Japan and Mexico (Invs. Nos. 731-TA-919-920). Moreover, it is significant that in the ITC's 201 investigation, not one U.S. welded LDLP producer stepped forward to withdraw or modify this request. Indeed, the ITC cited the position of the U.S. industry as a major factor influencing its decision to exclude these products from its recommended remedy for welded non-OCTG.

The U.S. industry's request to exclude these products from potential trade restrictions, whether in the context of an antidumping investigation or a safeguards proceeding, creates the unmistakable inference that it does not produce the products. Obviously, imposition of a remedy on products that the U.S. industry does not produce would be of little help to U.S. companies or American workers. In fact, as discussed below, imposition of such a remedy would be even worse than useless in that it would seriously harm U.S. consumers and the U.S. economy, particularly in the energy sector.

Another equally compelling reason why a remedy should not be imposed on welded LDLP is that imposition of a remedy on imports of the larger category of welded non-OCTG from Brazil would violate Article 9.1 of the WTO Agreement on Safeguards. This is because imports from Brazil of welded non-OCTG fall under the so-called "developing country exception" contained in that article. During the period January 2000 through June 2001, imports of welded non-OCTG from Brazil were 0.07 percent of total imports. Under Article 9.1 of the Safeguards Agreement, because imports of welded non-OCTG from Brazil are under 3 percent of total imports, no safeguards remedy may be imposed on such imports. Moreover, during the period January 2000 through June 2001, total imports of welded non-OCTG from countries that, considered individually, constituted less than 3 percent of total imports during that period were 8.2 percent of total imports. Under Article 9.1, because imports from these countries are under 9 percent of total imports, no safeguards remedy may be imposed on such imports.

In the event the President determines, however, that he must impose a remedy for these products, CONFAB recommends that he set a separate global quota for welded LDLP that reflects the anticipated needs of U.S. firms that rely on such products to meet the growing energy needs of the U.S. economy. In doing so, the President should confer with major U.S. companies that purchase welded LDLP, such as the Williams Companies, Shell Exploration and Production, and BP America, who have vigorously opposed imposition of a trade-restrictive remedy on these products. This separate global quota should reflect the fact that these types of welded LDLP are qualitatively very different from other types of welded pipe, and that imports of these products are not injuring the U.S. industry.

II. THE PRESIDENT SHOULD NOT IMPOSE A REMEDY ON CERTAIN WELDED LARGE-DIAMETER LINE PIPE

A. Imposition Of A Remedy on Imports that the Domestic Industry Does Not Produce Would Serve No Purpose

Under section 203 of the Trade Act of 1974 (the Act), simple logic dictates that the President cannot impose a trade-restrictive remedy on products that the domestic industry does not produce. The President's statutory mandate at this stage of a safeguards investigation is to "take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs."[2] This mandate, of course, presumes that the industry has been seriously injured or is threatened with serious injury by reason of that import competition. In that light, it is hard to understand why a domestic industry would seek to exclude certain products from the scope of an antidumping investigation, and would subsequently fail to object to their exclusion from a concurrent safeguards investigation, if it were having difficulty competing with imports of those products. The only reason for a domestic industry to support exclusion of specific products from a trade proceeding that could result in restrictions on imports of those products would be if it did not produce those products.

The lack of interest of the domestic welded LDLP industry in the products for which CONFAB is requesting exclusion is abundantly clear from events of the past nine months. On April 9, 2001, the U.S. welded LDLP industry requested that the following products be excluded from the scope of the Commerce Department's antidumping investigations on Certain Welded Large Diameter Pipe from Japan and Mexico:[3]

- LDLP of outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 or greater, regardless of grade.
- LDLP of outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inch in grades A, B, and X42, with wall thickness measuring greater than 0.750 inch in grades X52 through X56, and with wall thickness measuring greater than 0.688 inch in grades X60 or greater.
- LDLP of outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inch in grades X52 through X56, and with wall thickness measuring greater than 0.875 inch in grades X60 or greater.

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2 19 U.S.C. §2253(a)(1)(A).

3 Petitioners' request is attached as Exhibit 1.

- LDLP of outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.275 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.

- LDLP of outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.

- LDLP of outside diameter greater than 64 inches and of any grade or wall thickness.

The Department of Commerce (Commerce) acceded to petitioners' request and published the proposed exclusion language verbatim in its Final LTFV Determination.[4]

As noted above, the LDLP for which CONFAB requests exclusion consists of LDLP of API grades X65 and X70, 18" and greater in outside diameter, with wall thickness 0.562" and greater. With the exception of LDLP with wall thickness between 0.562" and 0.688", consequently, the entire description of these products falls under one or more of the categories for which the domestic industry requested exclusion in the Japan/Mexico antidumping investigations.[5]

Having excluded the products listed above from the antidumping investigations, the U.S. welded LDLP industry reinforced its position in the context of the ITC's Section 201 safeguards investigation. Given the opportunity at the ITC's November 8 remedy hearing to address the issue of whether the products excluded from the antidumping investigations should also be excluded from the ITC proceeding, not one U.S. welded LDLP producer spoke out in opposition.

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4 66 Fed. Reg. 47172, (Sept. 11, 2001).

5 In 2001, CONFAB shipped more than 60,000 tons of the products in question to the United States. Of this total, more than 50,000 tons, or over 80 percent, were of products that the domestic industry requested be excluded from the antidumping investigations.

In fact, none of the producers even attended the hearing or were represented by counsel. Subsequent to the ITC hearing, one of the major U.S. producers of welded LDLP, Berg Steel Pipe, submitted a letter to the USTR formally expressing its support for the exclusions.[6] According to BP America, a major purchaser of welded LDLP, other U.S. welded LDLP producers, such as Saw Pipes USA, Inc., and Napa Pipe Corp., have recently gone on record as registering no objection to the exclusions.[7] A majority of the ITC was evidently impressed by the U.S. industry's position, as that majority cited it as a major factor influencing its decision to exclude these products from its remedy recommendations.

The position of the U.S. welded LDLP industry on CONFAB's request, therefore, is clear. With regard to the majority of the products covered by CONFAB's request, the U.S. industry does not support imposition of any remedy. It must be inferred, therefore, that there is no domestic production of these products, as the only possible motivation for the industry in seeking the exclusions is that the industry does not produce the products. It should be obvious, therefore, that imposing restrictions on imports of products that the United States does not produce would serve no purpose. Such restrictions would do nothing to help either U.S. welded LDLP producers or American workers.

B. Imposition of a Remedy on Products that are Not Produced by the Domestic Industry in Sufficient Quantities to Meet Market Demand would Harm American Consumers and Interfere with the President's National Energy Policy

As noted above, a small portion of the products covered by CONFAB's exclusion request were not included in the domestic industry's request, and thus presumably are produced by the

[6] Letter from David J. Delie, Berg Steel Pipe Corp., to Gloria Blue, USTR, Nov. 27, 2001.

[7] Letter from counsel to BP America to Carmen Suro-Bredie, USTR, Dec. 5, 2001.

domestic industry. With regard to these products, however, ample evidence exists that the U.S. industry is unable to meet current U.S. market demand. In such a situation, imposition of a trade-restrictive remedy would be inappropriate, and even harmful. Indeed, if the President were to impose a remedy in such a situation, he would violate the statutory mandate that the remedy provide greater economic and social benefits than costs.[8]

During the ITC proceeding, several major U.S. oil and gas companies that use welded LDLP testified that, given current trends in consumption of welded LDLP, existing U.S capacity is woefully inadequate to supply their needs. For example, Shell Exploration and Production Company, a major purchaser of welded LDLP from Brazil, testified that "the limited availability of welded line pipe for deepwater applications is likely to become more acute, as demand is expected to be strong for the foreseeable future."[9] In fact, demand for welded LDLP is expected to remain quite strong in 2002. U.S. LDLP shipments are forecast to increase steadily from an average of 0.93 million tons per year over the 3-year period 1998-2000 to 1.50 million tons in 2001 and 1.95 million tons in 2002.[10] In addition, it is estimated that expenditures for natural gas pipeline construction will more than triple between 2001 and 2002, to a level of $6.4 billion.[11]

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[8] 19 U.S.C. §2253(a)(1)(A).

[9] Prehearing remedy brief of Shell Exploration and Production, Oct. 29, 2001, p. 10. During 2001, CONFAB was a major supplier to Shell in connection with the Na Kika project in the Gulf of Mexico. This project will extend for approximately 127 miles, and requires high-specification welded LDLP of the type at issue here.

[10] *See* Spears & Associates, Inc., The U.S. Large Diameter Line Pipe Market, Sept. 2001, pp. 13-14 (attached as Exhibit 1). Moreover, according to the October 2001 Preston Pipe Report, demand for LDLP in the U.S. market for 2002 will be 12.1 percent higher than projections for 2001.

[11] Spears & Associates, Inc., The U.S. Large Diameter Line Pipe Market, Sept. 2001, p. 5.

This increased expenditure results from an expected increase in gas pipeline capacity of 5.0 billion cubic feet per day between 2001 and 2002.[12]

There is no indication on the record that U.S. welded LDLP producers will be able to keep up with this trend. In 2001, demand for LDLP was estimated at 5,302 miles.[13] Based on the current effective capacities of the four U.S. producers of welded LDLP, the U.S. industry falls short of required capacity to supply this demand by approximately 37 percent.[14] Far from expanding their capacities to keep up with demand, U.S. producers have been doing exactly the opposite. For example, one of the producers, Pennsylvania Steel Technologies (PST), in early 2001 shut down its primary production facility, and it is not known when that facility will be back in operation.[15] Moreover, both Napa and Berg Pipe are booked through till the end of 2002, and thus would not be able to supply any new demand for gas and oil pipelines.

The President's National Energy Policy, as articulated in May 2001 by the National Energy Policy Development Group, places heavy emphasis on the kind of exploration efforts that involve the use of the kind of welded LDLP covered by CONFAB's exclusion request. As indicated in its May 2001 report:

> While the resource base that supplies today's natural gas is vast, U.S. conventional production is projected to peak as early as 2015. Increasingly, the nation will have to rely

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12 Id., p. 8.

13 Id., p. 7.

14 In 2001, these firms, Berg Steel, Napa Pipes, Saw Pipes, Inc., and Pennsylvania Steel Technologies, had a combined capacity of only 3,324 miles.

15 *See* http://www.bethsteel.com/customers/products/pst_pipe.shtml. At any rate, this mill is of 1960s vintage, and would currently be incapable of supplying LDLP to meet the technical requirements of current offshore oil and gas projects, even were it in operation.

> on natural gas from unconventional resources, such as tight sands, deep formations, deep water, and gas hydrates.[16] (emphasis supplied)

This increased reliance has already occurred, and is expected to accelerate in 2002 and beyond. For example, BP America expects to begin construction of its mammoth Mardi Gras project in 2002, with the first shipments of imported pipe arriving in January 2002, just before the time trade-restrictive remedies could be imposed under Section 203. As indicated in BP America's November 13 comments, this project would deliver up to one million barrels a day of oil and large volumes of natural gas as well.[17] In addition, BP America expects to use welded LDLP of the type that is unavailable from domestic producers in its construction of the Alaska Gas Pipeline project, currently being reviewed in a feasibility study. BP indicates that the Alaska Gas Pipeline project could bring up to 100 trillion cubic feet of natural gas to continental U.S. markets.[18]

These ongoing and planned projects all fit within the President's clearly expressed policy to promote the expansion and upgrading of the nation's natural gas transmission infrastructure. The President's plan also recognizes the need to speed up the timetable within which the Federal Energy Regulatory Commission (FERC) approves pipeline construction projects. Any type of trade-restrictive remedy that either, as in the case of a tariff, drastically increases the cost of imported pipe, or, as in the case of a quota, lessens its ready availability, would run directly counter to the President's policy. Even if such ventures as BP America's Mardi Gras and Alaska

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16 Report on the National Energy Policy Development Group ("National Energy Policy"), May 2001, at 5-3 to 5-6.

17 *See* Request to Exclude Certain Welded Large Diameter Line Pipe from Import Relief under Section 203, submitted by BP America, Inc., Nov. 13, 2001, pp. 6-7.

18 Id., at p. 8.

Gas projects were to proceed in the face of trade restrictions, the increased costs brought on by the restrictions would inevitably be passed on to energy consumers, damaging the U.S. economy and preventing recovery from the current economic slowdown. In an era in which there is increased urgency in bringing natural gas to market in order to address issues such as the recent California power crisis and growing demand from gas-fired utility plants, imposition of trade restrictions would deal a severe blow to such efforts.[19]

Accordingly, when the issue is viewed in the context of Section 203 of the Act, imposition of remedial measures, whether in the form of increased tariffs or quota restrictions, would not serve the purposes of U.S. law. Because U.S. producers are apparently incapable of satisfying market demand for welded LDLP in general, such measures would go beyond "the amount necessary to prevent or remedy the serious injury," and would thus contravene the express provisions of the statute.[20] Because U.S. producers are uninterested in producing the majority of the types of welded LDLP covered by CONFAB's request, such actions would not do anything to facilitate efforts by the domestic industry to make a positive adjustment to import competition, and would <u>not</u> provide greater economic and social benefits than costs. Rather, such measures would impose greater economic and social <u>costs</u> than benefits in that they would make it impossible for U.S. oil- and gas-producing firms to continue to develop their production

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[19] There are also compelling national security concerns involved here. If trade restrictions were placed on imports of welded LDLP, and if such restrictions led U.S. firms to abandon their efforts to develop domestic reserves, the United States would depend even more on foreign suppliers to fulfill its energy requirements. At a time of increased instability in foreign oil-producing regions, that would be an extremely unwelcome and dangerous development.

[20] 19 U.S.C. §2253(e)(2).

operations to implement the President's Energy Plan, thereby serving the U.S.'s growing energy needs.

III. THE WTO AGREEMENT ON SAFEGUARDS REQUIRES THAT IMPORTS OF WELDED NON-OCTG FROM CONFAB BE EXEMPTED FROM ANY IMPORT RESTRAINTS IMPOSED AS A RESULT OF THIS INVESTIGATION

A. The United States Has an a Clear Obligation to Exclude All Developing Countries that Meet the Requirements of Article 9.1 of the Agreement on Safeguards

Article 9.1 of the Agreement on Safeguards clearly delineates the obligations of all World Trade Organization ("WTO") members. Article 9.1 states:

> Safeguard measures shall not be applied against a product originating in a developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 percent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[21]

Thus, as a WTO member, Article 9.1 of the Safeguards Agreement is an unambiguous international commitment of the United States. When determining the proper remedy to apply in this case, the President should be mindful of the obligation of the United States under Article 9.1 to exclude developing country WTO members from application of any measure.[22]

Based on the criteria used in the past by the President in determining whether countries qualify as developing countries for purposes of applying Article 9.1, Brazil clearly qualifies as a developing country. The President has applied the exception to all GSP-eligible countries as of

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21 WTO Agreement on Safeguards Article 9.1 (emphasis added).

22 The United States has acknowledged its Article 9.1 obligation in several post-WTO safeguard investigations. For example, in the 1996 safeguard investigation of broom corn brooms, the President applied increased duties on imports from all countries except "Canada and Israel and developing countries that account for less than three percent of the relevant imports over a recent representative period." Proclamation 6961 of November 28, 1996: To Facilitate Positive Adjustment to Competition From Imports of Broom Corn Brooms.

the effective date of the presidential proclamation. As Brazil is a WTO member and is eligible for GSP treatment, it qualifies for application of the exception.

B. Application Of Article 9.1 Of The WTO Safeguards Agreement Shows Imports of Welded Non-OCTG From Brazil Should Be Excluded From The Remedy

1. The President Should Use Import Volumes From January 2000 Through June 2001 To Calculate Brazil's Share Of Imports, as Use of That Period is Consistent with the President's Past Practice, That Period is Contemporaneous With the Period in Which the ITC Found Injury, and That Period is the Most Recent Period

When calculating the share of imports from Brazil in total imports of welded non-OCTG in the U.S, market, the President should use import data covering the period January 2000 through June 2001. This period is the most appropriate to use in calculating Brazil's import share because it is consistent with the President's past practice of using the most recent portion of the Commission's period of investigation. In the few cases where the President has explicitly applied Article 9.1 of the *WTO Safeguards Agreement*, the President has selected the most recent part of the period of investigation. For example, in *Broom Corn Brooms,* the President excluded all GSP beneficiary countries whose import volumes were below the three percent threshold.[23] Although the President's proclamation was silent regarding how the import shares were calculated, the USTR notification of the implementation of safeguard measures to the WTO stated that the calculations were based on an examination of the developing country import volumes from the most recent portion of the period of investigation (*i.e.*, 1994 through 1995).[24]

23 Presidential Proclamation No. 6961, 61 Fed. Reg. 64431 (Dec 4, 1996).

24 Notification Pursuant to Article 12.1(c) and Article 9.1, fn 2 of the WTO Safeguards Agreement – United States (6 December 1996), G/SG/N/10/USA/1, G/SG/N/11/USA/1, at B3 (showing developing country import shares for 1994-1995).

This period is analogous to 2000 and the interim period (*i.e.*, January 2000 to June 2001) in this case because both periods represent the most recent portion of the period of investigation. Thus, using the period of January 2000 through June 2001 in the current investigation would be consistent with the President's past practice of using the most recent portion of the Commission's period of investigation.

The January 2000 to June 2001 period also is appropriate because it is a part of the period of investigation in which the Commission found injury. The President should limit the examination of imports from Brazil to the most recent portion of the Commission's period of investigation because it most accurately reflects Brazil's true share of imports. Periods after the interim period (*i.e.*, after the section 201 investigation was initiated) may be misleading because some countries may have attempted to increase shipments before any safeguard measures were put into effect. Moreover, the Commission's period of investigation is the period in which the Commission based its finding of injury. It is only logical that the most recent portion of that period be the basis for determining if developing countries such as Brazil should be excluded from the remedy.

Finally, the period January 2000 through June 2001 is most appropriate because it satisfies the emphasis of the WTO Appellate Body to focus on the most recent periods. Although the *WTO Safeguards Agreement* does not provide a specific time period for which the Article 9.1 requirements should be calculated, the Appellate Body has provided some guidance on selecting an appropriate period. In *Argentine Footwear*, the Appellate Body expressed a preference for using the most recent period, rejecting the use of a five-year historical period.[25] This requirement that the investigation focus on the most recent period should apply, at least by

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[25] *Footwear* at Para. 130 and n. 130 (emphasis added).

analogy, to the issue of the time period used for Article 9.1. As shown above, in past cases, Presidential action with respect to Article 9.1 has been consistent with this emphasis on the most recent part of the period of investigation. The use of the period January 2000 through June 2001 is consistent with this emphasis.

C. Import Data Show that Imports of Welded Non-OCTG from Brazil Should be Excluded From The Remedy Because They Are *De Minimis*

As discussed above, the United States has an obligation not to impose the remedy on a developing country WTO member if "its share of imports . . . does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned."[26] Under this provision, imports of welded non-OCTG from Brazil should be excluded from the remedy.

Imports of welded non-OCTG from Brazil should be excluded from the remedy because Brazil's share of welded-non OCTG imports is less than 3 percent of total imports and developing country Members with less than 3 per cent of welded non-OCTG imports together account for less than 9 percent of total imports. From January 2000 to June 2001, Brazil's import share was 0.07 percent. As shown below, the total for all WTO developing countries under 3 percent was 8.20 percent.

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[26] Article 9.1 of the *WTO Safeguards Agreement*

January 2000 to June 2001 – Welded non-OCTG	
Albania	0.00%
Argentina	0.29%
Belize	0.00%
Brazil	0.07%
Cameroon	0.00%
Chile	0.13%
Colombia	0.57%
Croatia	0.05%
Czech Republic	0.03%
Ecuador	0.00%
Egypt	0.25%
Georgia	0.04%
Guatemala	0.17%
Guyana	0.00%
Hungary	0.00%
India	1.14%
Indonesia	1.24%
Kenya	0.00%
Mauritius	0.00%
Oman	0.28%
Pakistan	0.20%
Peru	0.03%
Philippines	0.24%
Romania	0.76%
South Africa	1.23%
Sri Lanka	0.00%
Turkey	1.43%
Venezuela	0.03%
Zimbabwe	0.01%
Total	**8.20%**

In order to honor its international obligations, therefore, the United States has no choice but to exclude imports of welded non-OCTG from Brazil from any remedy imposed on those products in this investigation.

IV. SHOULD THE PRESIDENT DECIDE TO INCLUDE CERTAIN WELDED LARGE DIAMETER LINE PIPE IN HIS REMEDY RECOMMENDATIONS, HE SHOULD ESTABLISH A SEPARATE GLOBAL QUOTA FOR CERTAIN WELDED LARGE DIAMETER LINE PIPE

If the President concludes that he cannot exclude certain welded LDLP from his remedy recommendations, he should provide a separate remedy for these products that recognizes the unique nature of these products and their importance to the Administration's energy policy. As demonstrated above, given current economic conditions, no remedial purpose would be served by restricting imports of welded LDLP. Rather, if a remedy is imposed it should be in the form of a global quota that takes into account the anticipated needs of U.S. companies that are working to implement the President's energy policy. Such a quota would be one that considers the effect of large project volumes on available individual mill capacity levels, and is designed to provide U.S. energy companies with maximum supply flexibility.

A. Most of the Remedies Recommended by the International Trade Commission are Inappropriate for Welded Large Diameter Line Pipe

In its determination of December 19, 2001, the U.S. International Trade Commission (ITC) made various recommendations to the President concerning the relief that should be provided to U.S. producers of welded tubular products, other than OCTG, consisting of either tariffs or tariff-rate quotas. Chairman Koplan and Commissioners Miller and Hillman went on to recommend, though, that their proposed remedies not apply to "certain large diameter welded line pipe products." Should the President decide not to accept these commissioners' recommendations on exclusion, however, none of the recommendations forwarded to the President by the ITC, except for the recommendation made by Vice Chairman Okun, is appropriate for welded LDLP.

1. Imposition of Tariffs would Not Provide Greater Economic and Social Benefits than Costs

In its October 22 injury determination, three members of the Commission found only a threat of injury to the U.S. industry producing welded non-OCTG. Accordingly, in its December 19 remedy recommendation, those same three commissioners recognized that imposition of tariffs on welded non-OCTG would be inappropriate, as tariffs would affect levels of imports that the ITC found did not cause serious injury to the U.S. industry. As a general matter, these commissioners seemed to be indicating that in cases where mere threat of serious injury is found, the Commission should adopt a more "forward-looking" remedy, such as quotas or tariff-rate quotas.

More importantly, with regard to the subcategory of welded LDLP, imposition of tariffs, specifically the 30 percent ad valorem tariffs recommended by Commissioners Bragg and Devaney, would effectively bring to a halt all deepwater projects currently underway in the United States, in situations in which pipe would not have been imported prior to the effective date of the restrictions. At the ITC's November 8 remedy hearing, in response to a question from Commissioner Miller as to whether tariffs or quotas would be a preferable remedy for welded LDLP, an executive from BP America stated:

> {One risk} is the cost of construction of the project. When the original CAPS pipeline, which is the oil line that was built, that was a $900 million project that ended up costing $9 billion to build. That's a huge undertaking and that's a huge risk. But we're prepared to take the construction risk on the project. But we've got to be able to do it <u>where we know that the project costs are going to be controllable</u>. Right now we've not been able to get the Alaska project to the point of economic viability and to add any additional tariffs or quota on that project is like asking me the question, do you prefer to be hanged or shot? Neither one of them are {sic} going to allow you to go forward with this project because we've got to end up reducing the cost of this thing another half a

> billion dollars or so before we could even attempt to build it right now.[27] (emphasis supplied)

Clearly, once a project of this magnitude is underway, a sudden cost increase of 30 percent would be difficult, if not impossible, to absorb in order to keep the project going. Rather, a more likely outcome would be temporary or permanent abandonment of the project. Similarly, for projects still in the development stage, a 30-percent increase in the cost of a key input would mean deferment or even cancellation of the project. As the President's National Energy Policy correctly recognizes, with the increased long-term domestic demand for oil and natural gas coupled with instability in foreign oil-producing regions, the United States cannot afford either outcome.

2. **<u>The Tariff-Rate Quota Levels Recommended by the ITC are Too Low to Meet Current U.S. Market Demand and would Introduce Undue Uncertainty into the Welded LDLP Market</u>**

The remaining four ITC commissioners opted to recommend tariff-rate quotas instead of straight tariffs. Chairman Koplan and Commissioner Miller recommended a first-year quota level of 2.6 million tons based on 2000 import levels, whereas Commissioner Hillman recommended a first-year quota level of 1.4 million tons, also based on 2000 import levels.[28]

Again, given the importance of an adequate supply of welded LDLP to the President's National Energy Policy, if a tariff-rate quota is employed, a separate global quota should be established for welded LDLP based on the anticipated needs of U.S. users, not on any arbitrary

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[27] ITC remedy hearing transcript (Nov. 8, 2001), p. 608 (testimony of Mr. Welch).

[28] The difference is accounted for by the fact that Chairman Koplan and Commissioner Miller found serious injury to the U.S. welded non-OCTG industry by reason of imports from NAFTA countries Canada and Mexico, while Commissioner Hillman did not.

past period that is unrepresentative of current demand. The problem with the quota levels recommended by the ITC commissioners is they are not likely to be adequate to meet U.S. demand, based on current estimates. According to the Spears Report, U.S. LDLP shipments are expected to exceed 1.95 million tons in 2002.[29] Thus, the quota level recommended by Commissioner Hillman would be inadequate to meet U.S. demand for LDLP in the near term, and the levels recommended by Chairman Koplan and Commissioner Miller would also likely be inadequate given the fact that the quota is also intended to cover other welded tubular products. In any event, to the extent imports exceeded the quota levels, the ensuing tariffs would create a powerful disincentive to continuation of existing drilling projects or commencement of new ones.

3. <u>If the President Decides to Accept Vice Chairman Okun's Recommendation, the Exclusion of Certain LDLP Contained Therein Should be Expanded to Cover the Welded LDLP Products Contained in CONFAB's Request</u>

Like Commissioner Hillman, Vice Chairman Okun recommended a tariff-rate quota with a first-year quota level of 1.4 million tons. Vice Chairman Okun, however, included in her recommendation a provision that entries of LDLP that were excluded from the Japan/Mexico antidumping investigation should be counted against the TRQ's fill rates but should not be assessed increased tariffs in the event the entries exceeded the yearly quota. The exemption of these products from the tariff component of the TRQ effectively amounts to their exclusion from the remedy recommendation. In the event the President decides to accept Vice Chairman Okun's recommendation, for reasons outlined above, he should expand the exclusion to include all welded LDLP covered by CONFAB's request.

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[29] *See* Spears & Associates, Inc., <u>The US Large Diameter Line Pipe Market</u>, Sept. 2001, pp. 13-14.

V. CONCLUSION

In sum, CONFAB respectfully requests that the President not include certain welded LDLP, as defined herein, in any remedy he may provide the U.S. industry producing welded non-OCTG. In the alternative, if the President deems it appropriate to include these products in his remedy determination, CONFAB urges the President to design a global quota for these products that takes into account their importance to U.S. oil and gas companies and their role in the effective implementation of the President's National Energy Policy.

Respectfully submitted,

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